*HON'BLE SRI JUSTICE L.NARASIMHA REDDY

+WRIT PETITION NO.17092 OF 2005

% 20th September 2005

M.Sunil Chowdary

…Petitioner

And

$ Govt.of A.P. rep. By its Prl.Secretary,

Health, Medical & Family Welfare Department & others

…Respondents

! Counsel for the petitioner: Mr.K.G.K.Prasad

^ Counsel for respondents : G.P. for Medical & Health,

Mr.D.V.Nagarjuna Babu, Standing

Counsel

< Gist:

> Head Note:

? Cases referred:

1. 1996(1) ALD 366 (D.B)

THE HON'BLE SRI JUSTICE L. NARASIMHA REDDY

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THE HON'BLE SRI JUSTICE L. NARASIMHA REDDY

W.P.NO.17092 OF 2005

JUDGMENT:

The petitioner assails the action of the District Sainik Welfare Officer, Guntur, in rejecting his claim for the status of Children of Ex-servicemen, in the context of admission to I Year M.B.B.S. Course for the academic year 2005-2006 against the seat reserved for that category.

The State of Andhra Pradesh conducts a Common Entrance Examination for the purpose of selecting candidates for admission into I year of M.B.B.S. Course, in the colleges established in the State. In exercise of powers conferred under Sections 3 and 15 of the A.P. Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 (for short '*the Act*'), the Government promulgated Rules for regulating admissions into Private Medical and Dental Colleges, from time to time. Separate sets of Rules are framed, governing the admission into government and private Medical and Dental Colleges from the State.

So far as the admissions into private Un-aided, Non-minority, Professional Medical and Dental Colleges are concerned, the Rules published through G.O.Ms.No.184, Health, Medical and Family Welfare (EI), dated 30-06-2004, hold the field, for the current academic year also.

The Rules *inter alia* provide for categorization of seats in the types of colleges, referred to above, as well as the nature of reservations to be followed for making admissions therein. The seats are divided into three categories. 50% of the seats are to be filled by candidates, selected by the Admission Committee, constituted by the State, and in all respects, these seats are similar to those in Government colleges. The second category comprises of 25% of the sanctioned strength. Selection to this category of seats, is also on the basis of merit, but the fee structure would be different. The balance 25% of the seats are to be filled by the management of the institution, with the qualified candidates. Depending on the category of seats to be filled in, reservations in favour of SCs, STc and BCs are to be followed. The reservations provided for under the Presidential Order, issued under Article 371-D also govern the field. We are not concerned with those kinds of reservations, in this writ petition. Rule 9(3) provides for reservation in favour of various categories, such as N.C.C., Sports, Physically Handicapped, and Children of Armed Personnel (CAP). The controversy in this writ petition relates to the manner of selection of candidates against the seats reserved in favour of Children of Armed Personnel, which is 1% of the available seats. Under this category, the children of Armed Personnel, in service, as well as Ex-servicemen are eligible to be considered.

The petitioner appeared in the entrance examination for the current academic year. He secured the rank – 4140. He was not selected, either in the Government

Colleges or in the Private Un-aided Colleges, on merit. Father of the petitioner joined in the Indian Army on 28-08-1975, and worked as Inventory Clerk in Group-B. He was discharged from service, exactly after three years on 28-08-1978. Petitioner made a claim for a seat, reserved in favour of Children of Armed Personnel. Under the procedure followed by the 2nd respondent University, claims of candidates for seats reserved in favour of Ex-servicemen are to be processed and certified by the concerned District Sainik Welfare Officer. The claims of the petitioner, or other candidates, were also referred to the 3rd respondent. Through their endorsement, dated 29-07-2005, the 1st respondent rejected the claim of the petitioner on two grounds, *viz*., the service of the father of the petitioner was less than five years, and that he was discharged from the service on his own request.

Sri K.G.K. Prasad, learned counsel for the petitioner submits that the action of the 3rd respondent is illegal, arbitrary and contrary to the statutory Rules. He contends that the very officer, who rejected the claim of the petitioner, for the current academic year, recognized it during the previous academic year and certified that the petitioner comes under that category. Learned counsel submits that the petitioner did not avail the benefit of reservation during the previous academic year, because he was offered seat in the I Year of B.D.S. Course, and when he improved his performance in the current academic year, the claim was rejected on untenable grounds. He further contends that the Rule, as it stands now, does not require minimum of five years of service in the Armed Forces, to be recognized as an Ex-serviceman, nor there is any stipulation to the effect that, those who are discharged, at request, cannot be treated as Ex-servicemen. He places reliance upon different sets of Rules as well as certain decided cases.

Sri D.V.Nagarjuna Babu, learned Standing Counsel for the 2nd respondent, on the other hand, submits that the reservations in favour of Ex-servicemen is meant for those, whose parents are serving the Armed Forces, or have retired from it, in the usual course, and not for those, who served for a short duration and stood discharged at their request. Learned counsel contends that if the claims of the persons, who joined the Armed Forces and left it after a short while; are to be considered, the very purpose would be defeated, and genuine cases of those, who served for the full tenure, with dedication, would be defeated. He further submits that the Government framed Rules under the Act, initially through G.O.Ms.Nos.339, dated

29-05-1985 and 368, dated 29-05-1986, and they were amended through G.O.Ms.No.532, dated 21-08-1986, with reference to the definition of Ex-servicemen. Learned counsel points out that the definition of Ex-servicemen, in the notification dated 15-12-1979 issued by the Department of Personnel and Administrative Reforms, Ministry of Home Affairs, Government of India, was adopted by the Government of Andhra Pradesh, in the year 1986, and though the Rules have undergone minor changes, year-after-year, the one, relating to definition of Ex-servicemen, is not altered. He contends that the action of the 3rd respondent accords with the settled principles and definitions adopted by the competent authorities, and that the writ petition deserves to be dismissed.

The only controversy in this writ petition is as to whether the father of the petitioner answers the description of Ex-servicemen, as defined under the relevant provisions. If the answer to this question is in affirmative, the petitioner will be entitled to be admitted into MBBS I-Year, against a seat reserved in favour of the children of armed personnel, on the basis of the rank secured by him.

Ex-servicemen are conferred with various kinds of benefits, from time to time. On being discharged from service, they are provided with employment in civilian organizations, depending on their qualifications and existence of vacancies. Government lands are allotted subject to availability, to the Ex-servicemen. Similarly, seats in educational institutions are reserved in favour of their children. There does not exist much difficulty in understanding the expression “Ex-servicemen”. However, since the claims increased and avenues depleted, the Government felt the necessity to define the expression.

In the context of providing employment to Ex-servicemen, the Government of India issued a Notification, dated 15.12.1979, in exercise of powers under proviso to Article 309 of the Constitution of India. It framed the Ex-Servicemen (Re-employment in Central Civil Services and Posts) Rules. The term “Ex-servicemen” was defined as under:-

> “ “***Ex-servicemen***” means a person, who has served in any work (whether as a combatant or as non-combatant) in the Armed forces of the former Indian States, but excluding the Assam Rifles, Defence Security Corps;, General Reserve Engineering Force, Lok Sahayak Sena and Territorial) Army, for a continuous period of not less than six months after attestation, and

i. has been released, otherwise than at his own request or by way of dismissal or discharge on account of misconduct or inefficiency, or has been transferred to the reserve pending such release, or

ii. has to serve for not more than six months for completing the period or service requisite for becoming entitled to be released or transferred to the reserve as aforesaid, or

iii. has been released at his own request, after completing five years service in the Armed Forces of the Union:"

The same definition was introduced into the A.P. State and Subordinate Service Rules, by the Government of Andhra Pradesh, amending the rules, through its orders in G.O.Ms.No.738, GAD, dated 4.12.1980.

The Government of Andhra Pradesh framed admission rules, regulating the admissions into various courses, in exercise of powers under Sections 3 and 15 of the Act. Initially, the rules in relation to admissions into I-year MBBS and BDS courses, were framed in G.O.Ms.No.339, dated 29.5.1985. Those rules were amended, through G.O.Ms.No.532, Medical & Health, dated 21.8.1986, providing for reservation, in favour of children of armed personnel. The same definition, as found in the Government of India Notification dated 15.12.1979, and in G.O.Ms.No.738, dated 4.12.1980, was incorporated for this purpose. Though the rules have been amended in several respects, from time to time, there is nothing to indicate that the said definition has been given up, or was substituted with any other. It is true that in the rules framed in G.O.Ms.No.184, dated 30.6.2004, which govern the current admissions, this definition does not find place. However, a perusal of the rules framed for successive years, discloses that the broad aspects, which were framed earlier, were continued, without repeating the same every year.

According to the definition of Ex-servicemen, in the relevant admission rules, a person who served in the Armed Forces of Indian Union, in any rank, must have been service for a continuous period of not less than six months, after attestation, and must have been released from service "other wise than at his own request, or by dismissal or discharge, on account of misconduct or inefficiency". If a person recruited to Armed Forces has been released, at his own request, or was dismissed or discharged, on account of misconduct, or inefficiency, he does not answer the

description of Ex-servicemen. In the instant case, it is not in dispute that the father of the petitioner has been released, at his own request. Therefore, he does not answer the description of Ex-servicemen.

Learned counsel for the petitioner placed reliance upon a judgment of a Division Bench of this Court in ***M.ANIL BABU v. DIRECTORATE GENERAL RESETTLEMENT.*** That case also related to the scrutiny, as to whether the appellant therein was an Ex-serviceman. The provision was the same, as the one extracted above. The appellant therein was released from Indian Air Force, on the ground that he is "unlikely to make an efficient airman". The Division Bench found that such a discharge did not fall under any of the categories of the release, *viz.* at his own request, dismissal or discharge, on account of misconduct or inefficiency. The same is not the case here. Undisputedly, the father of the petitioner was released from service, at his own request. Therefore, the ratio of the said judgment does not apply to the facts of this case.

Learned counsel for the petitioner doubted the applicability of the provision, referred to above, on the ground that it does not find a mention in the extant rules. As observed earlier, the broad features remained the same, and the Government did not feel any necessity of repeating the text of the rules, every year. At any rate, there is no definition of Ex-servicemen in the present rules. Even assuming that the rules are silent on this aspect, it is not impermissible to refer to the notifications issued by the State and Central Governments, in exercise of their powers under the proviso to Article 309 of the Constitution of India. There is no reason why the same definition cannot be adopted, which in fact, has been done so, way back in the year 1986. The petitioner is not able to demonstrate that the rule making authority had coined a different definition for the term "Ex-servicemen".

For the foregoing reasons, the writ petition is dismissed. There shall be no order as to costs.

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(L.NARASIMHA REDDY, J)

Dt. 20–9-2005.

L.R. copies be marked.

KO/PAN